



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/030,394	02/25/98	YUSCHAK	19462-110

020121 QM41/0326
THELEN REID AND PRIEST LLP
PATENT DEPARTMENT
701 PENNSYLVANIA AVE NW
SUITE 800
WASHINGTON DC 20004

EXAMINER	
LEWIS, A	
ART UNIT	PAPER NUMBER
2725	4

DATE MAILED:

03/26/99

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action Summary

Application No.

09/030,394

Applicant(s)

Gregory Yusehak et al.

Examiner

A. J. Lewis

Group Art Unit

3735

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 2/25/98 (Filing Date)
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 111; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-28 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-28 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 3735

DETAILED ACTION

Reissue Applications

1. Applicant is reminded of the continuing obligation under 37 CFR 1.56 to timely apprise the Office of any litigation information, or other prior or concurrent proceeding, involving Patent No. 5,579,761 , which is material to patentability of the claims under consideration in this reissue application. This obligation rests with each individual associated with the filing and prosecution of this application for reissue. See MPEP §§ 1404, 1442.01 and 1442.04.
2. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3735

In claim 14, line 2, the mere recitation of "...a second engagement mechanism..." is indefinite as to exactly what structure applicant intends to define including exactly function it performs and how such a structure is physically interrelated with the other recited parts of the respirator.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-10,13,15,16,18-28 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tayebi ('508).

As to claim 1, Tayebi discloses a respirator that comprises: a face piece (11) sized to fit at least over the nose and mouth of a person (col.9, lines 63-67); a cartridge receiving structure (22) located on the face piece; and a filter cartridge (19,20) that has a housing into which a filter is contained, the filter cartridge (19,20) capable of being manually snapped into engagement with the cartridge receiving structure (22) to produce an audible noise (col. 9, lines 10-16, 50-54;

Art Unit: 3735

col.10, line 48-col.11, line 11), the engagement being being instantaneously obtainable by pressing the filter cartridge against the receiving structure without rotational movement, the filter cartridge further being capable of being readily separated from the cartridge receiving structure by pulling manually thereon.

Alternatively, while Tayebi does not explicitly disclose the production of an audible noise, there is explicit disclosure of the manual manipulation of the filter cartridge (19,20) against the cartridge receiving structure (22) (both of which are made of resilient thermoplastic materials) during insertion of the filter cartridge into the cartridge receiving structure and explicit disclosure of the phrase "...snap fit..." as it relates to the insertion of the filter cartridge into the cartridge receiving structure (col. 9, lines 10-16, 50-54; col.10, line 48-col.11, line 11). It would have been obvious that the coupling of the filter cartridge and cartridge receiving structure of Tayebi would have resulted in the production of an audible noise upon coupling because the the filter cartridge and cartridge receiving structure are made of resilient thermoplastic material (i.e. there is physical deformation during coupling) and because of the explicit disclosure of the terminology "...snap fit..." as it relates to such a coupling.

As to claim 2, the respirator of Tayebi is readable upon a negative pressure respirator inasmuch as it requires a user to create a negative pressure during inhalation to cause ambient air to flow into the respirator.

As to claims 3,4,16,18,19 Tayebi (col.11, lines 9-10) discloses an air tight seal formed between the filter cartridge and cartridge receiving structure due to the mating the radially outwardly

Art Unit: 3735

projecting flange surface (19,20) of the filter cartridge with the inwardly projecting skirt surface (#22 of fig.4a) of the cartridge receiving structure.

As to claims 5,6,13,20, the male and female members (i.e. filter cartridge flange and cartridge receiving groove/projection, respectively) of Tayebi compress and expand in a manner which results in a complimentary air tight fit therebetween (col.10, line 48-col.11, line 11).

As to claims 7,8, Tayebi (fig.5) discloses a filter element (18) which is offset axially (i.e. offset axially inwardly) from the filter cartridge (23) when the filter cartridge is in engagement with the cartridge receiving structure and the cartridge receiving structure encompasses an aperture (12) which is less than the circumference of the cylindrical filter element (18).

As to claims 9,10, Tayebi (col.10, line 48-col.11, line 11) as discussed above with respect to claim 1, also discloses pressing the cartridge against the face piece and grasping the filter cartridge and pulling thereon axially in a direction normal to the face piece for removal.

As to claim 15, the snap fit engagement mechanism of Tayebi (19,20,22) is offset laterally from the filter element (17) and includes an outflow aperture (12) having a circumference substantially smaller than a circumference of the filter element.

Claims 21-25 are substantially equivalent in scope to claim 1 and are included in Tayebi for the reason set forth herein above with respect to claim 1.

As to claims 26-28, applicant is referred to the discussion above with respect to claims 3-6,13,16,18-20 above.

Art Unit: 3735

8. Claims 11,12,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tayebi ('508).

As to claims 11,12,17, the particular flexural modulus of the material of the cartridge receiving structure and filter cartridge of Tayebi and the particular amount of force required to couple and uncouple the filter cartridge to/from the cartridge receiving structure can be arrived at through mere routine obvious experimentation and observation with no criticality seen in any particular amount of force.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant respirators having snap fit filter cartridges.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Lewis whose telephone number is (703) 308-0716.

Aaron J. Lewis

March 24, 1999



Aaron J. Lewis
Primary Examiner